

DEPARTMENT OF THE ARMY PERMIT

PERMITTEE: California Department of Transportation

PERMIT NO.: 28771S

ISSUING OFFICE: San Francisco District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate District or Division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below:

PROJECT DESCRIPTION:

You are authorized to discharge into jurisdictional Waters of the U.S. including wetlands approximately 11 cubic yards of rock slope protection (RSP) and 4075 cubic yards of clean, granular fill material (from on-site sources). The above mentioned discharge material will fill 1.87 acres of wetlands and 0.34 acres of others waters of the U.S. that are associated with two unnamed drainages in the Vallecitos Hills adjacent to SR 84 southwest of Livermore. All jurisdictional sites where fill material will be discharged are illustrated on the maps shown in Appendix A of the *Pigeon Pass Realignment Project, Individual Permit Application*, dated January 2006.

The project will realign and widen a portion of State Route (SR) 84 through Pigeon Pass also known as the Vallecitos Hills, located southwest of Livermore in Alameda County, California. It begins near the intersection of Sabel Drive / Kalthoff Common with SR 84 and continues southwesterly to about 0.7 mile east of the SR 84 junction at Vallecitos Atomic Laboratory Road. The widening is being constructed to accommodate a passing lane for the uphill traffic in both the east and west bound direction. The project will also correct the existing vertical and horizontal alignment which in the existing highway is below standard and unsafe. This construction is needed for both safety and congestion relive purposes.

PROJECT LOCATION:

The project is located southwest of Livermore in Alameda County, California on SR 84 in the Vallecitos Hills. This section of highway is also known as Pigeon Pass.

PERMIT CONDITIONS:

GENERAL CONDITIONS:

1. The time limit for completing the work authorized ends **October 15, 2011**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should

you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

7. You understand and agree that, if future operations by the United States require the removal, relocation or other alteration of the structure or work authorized herein, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, you will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

SPECIAL CONDITIONS:

1. This Corps permit does not authorize you to take an endangered species. In order to legally take a listed species, you must have a separate authorization under the Endangered Species Act (ESA) (e.g., an ESA Section 10 permit or a Biological Opinion (BO) under ESA Section 7 with "incidental take" provisions with which you must comply). The enclosed U.S. Fish and Wildlife Service (USFWS) *Biological Opinion and Conference Opinion on the Proposed Pigeon Pass Curve Realignment, Southwest of Livermore, Alameda County, California* (BO), pages 63 – 74, dated February 25, 2005 contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the BO. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with incidental take authorized by the attached BO, whose terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the BO, where a take of the listed species occurs, would constitute an unauthorized take and it would also constitute non-compliance with this Corps permit. The USFWS is the appropriate authority to determine compliance with the terms and conditions of its BO and with the ESA.

2. Caltrans shall adhere to the conditions of the RWQCB Clean Water Act 401 Certification dated May 18, 2006.

3. Caltrans will create on the project site at a ratio of 1:1, a minimal of 0.65 acres of seasonal wetland to offset impacts to .65 acres of impacts to seasonal wetlands. The on site wetlands will be created approximately as shown in Figures 2 – 7 in the *Pigeon Pass Realignment Project Addendum to Individual Permit Application*, dated February 2006 unless Caltrans gets an approved modification from the Corps.

4. Caltrans will create on the project site at a 1:1 ratio a minimal of 0.18 acres of ephemeral creek channel to offset impacts to 0.18 acres of ephemeral creek channel. The on site channels will be created approximately as shown in Figures 2 – 7 in the *Pigeon Pass Realignment Project Addendum to Individual Permit Application*, dated February 2006 unless Caltrans gets an approved modification from the Corps.

5. Caltrans will create 1.61 acres of new wetland on the Sweet Ranch site before the start of construction on the Pigeon Pass Realignment Project. These wetland areas will be created as described in the preliminary Sweet Ranch mitigation proposal or as modified with Corps approval to meet Corps requirements. This mitigation is described in a small document written by Caltrans entitled *Sweet Ranch Mitigation Site, Off Site Mitigation Proposal for Impacts at Pigeon Pass for Army Corps Jurisdictional Waters of the U.S. including wetlands*, dated May 19, 2006.

6. Appropriate best management practices (BMPs) shall be implemented throughout the project site to minimize erosion and reduce sedimentation into adjacent waterways. BMPs shall include, but not necessarily be limited to, placement of silt fencing and fiber rolls, or hay bales to all exposed slopes adjacent to waterways to intercept sediments and stabilize all exposed areas. Erosion control blankets and/or seeding with appropriate seed mixes will be used at project completion to control erosion on all disturbed sites.

7. The seasonal pond at the top of the saddle east of SR 84 by Station 68+00 called Wetland #1F shall not be filled as shown in figure 1 in the *Addendum to Individual Permit Application* dated February 2006 until the pond has dried up for the season or is at its low for the season.

8. The pond at Station 60+50 known as Wetland # 3B, shall not be filled as shown in figure 1 in the *Addendum to Individual Permit Application* dated February 2006 until it has dried up for the season or is at its low for the season.

9. Work in the all wetlands and waters within the project will occur after the sites are dry for the season and will be completed for the season by October 15th.

10. Before project implementation, Caltrans shall provide the Corps with project plans showing all Environmentally Sensitive Areas (ESA) that will be clearly marked on the ground during construction areas.

11. Caltrans shall provide the Corps with detailed pre-construction maps or aerial photos of all off site mitigation required by the Corps showing existing waters of the U.S. including wetlands. All jurisdictional waters of the U.S. including wetlands shall be delineated by the Corps.

12. Caltrans shall provide the Corps with detailed post-construction maps or aerial photos of all off site mitigation required by the Corps showing existing waters of the U.S. including wetlands. All jurisdictional waters of the U.S. including wetlands shall be re-delineated by the Corps to demonstrate the increases created for the mitigation.

13. Caltrans shall provide the Corps with a set of Landscape Erosion Control and Planting Plans for the project areas and mitigation sites when such plans become available.

14. Caltrans shall submit a Final Mitigation, Monitoring, and Maintenance Plan to the Corps. The plan should include planting plans and details of all on-site and off-site mitigation, such as designs and construction drawings for in-stream structures, pond reconstruction, grading, planting, irrigation plans, and all other information, as appropriate. The plan should also include approximate completion dates, performance standards and success criteria.

All mitigation sites shall be monitored at least once annually and monitoring shall continue for 5 years or longer until the Corps determines that the mitigation is successful. A yearly monitoring report shall be sent to the San Francisco Corps Office by December 31 each season. The reports should also include recommendations for remedial action as needed.

The Final Mitigation, Monitoring, and Maintenance Plan may be amended subject to a review and approval by the Corps.

15. Provide the Corps with the proposed mitigation locations, copies of the proposed final conservation easements, or other legal documents that identify, among other things, the entity or entities that will hold those easements after the monitoring period is completed and how the mitigation sites will be preserved in perpetuity.

FURTHER INFORMATION:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

- () Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403)
- (X) Section 404 of the Clean Water Act (33 U.S.C. Section 1344).
- () Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization:

- a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability: In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.


5. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate. (See Item 4 above.)
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 C.F.R. Section 325.7 or enforcement procedures such as those contained in 33 C.F.R. Sections 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 C.F.R. Section 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions: General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

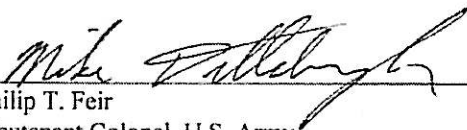


(PERMITTEE)

5/30/06

(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.



Philip T. Feir
Lieutenant Colonel, U.S. Army

5/30/06

(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFeree)

(DATE)